Supreme Court, U.S.
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No. 93-742

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JASON STEGE and JUSTIN STEGE,
Petitioners,

v.

C. JOSEPH GIRARD and MITCHELL B. TRIMMER,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether a reasonable police officer under the doctrine of qualified immunity and under the circumstances of this case could have believed the warrantless entry to be lawful in light of clearly established law and the information the searching officers possessed at the time.

It was the decision of the Tenth Circuit that the law at the time of this incident did not clearly establish whether the offenses being committed by the Petitioners were sufficient to justify a warrantless entry based on probable cause and exigent circumstances. The Tenth Circuit agreed with the United States District Court for the District of New Mexico that an objectively reasonable officer would have believed that the warrantless entry was lawful.

Petitioners mistakenly imply that the decision of the Tenth Circuit Court of Appeals was based on the conclusion by the Tenth Circuit that the offense of contributing to the delinquency of a minor (a fourth degree felony under New Mexico statutes) was implicated by the Respondents as the reason for making the warrantless search. The issue of whether a public official is entitled to qualified immunity is determined by an objective standard in light of clearly established law and the information possessed by the searching officers. The searching officer's subjective belief about the search is irrelevant to a determination of whether a public official is entitled to qualified immunity.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
CONCLUSION	11
APPENDIX	1a

TABLE OF AUTHORITIES

CASES	Page
Anderson v. Creighton, 483 U.S. 635, 97 L.Ed. 2d 523, 107 S.Ct. 3034 (1987)	5,8,11
Bledsoe v. Garcia, 742, F.2d 1237, 1241 (10th Cir. 1984)	6
Cooledge v. New Hampshire, 403 U.S. 443, 29 L.Ed.2d 564, 91 S.Ct. 2022, 2032 (1971)	7
Dunaway v. New York, 442 U.S. 200; 60 L.Ed. 2d 824, 99 S.Ct. 2248 (1979)	10
Harlow v. Fitzgerald, 457 U.S. 800, 73 L.Ed. 2d 396, 102 S.Ct. 2727 (1982)	4,5
Malley v. Briggs, 475 U.S. 335, 89 L.Ed.2d 271, 106 S.Ct. 1092 (1986)	11
Patrick v. Miller, 953 F.2d 1240 (10th Cir. 1992)	5
Payton v. New York, 445 U.S. 573, 63 L.Ed. 2d 639, 100 S.Ct. 1371 (1980)	5,6
United States v. Aquino, 836 F.2d 1268 (10th Cir. 1988)	7,9,10
United States v. Chavez, 812 F.2d 1295 (10th Cir. 1987)	9,10
United States v. Herring, 582 F.2d 535 (10th Cir. 1978)	9,11
United States v. Jimenez, 864 F.2d 686 (10th Cir. 1988)	9
United States v. Lopez, 777 F.2d 543 (10th Cir. 1985)	9,11
United States v. McEachin, 670 F.2d 1139 (D.C. Cir. 1981)	9
Welsh v. Wisconsin, 466 U.S. 740, 80 L.Ed 2d 732, 104 S.Ct. 2091 (1984)	6

Table of Authorities Continued

Page

STATUTES

Supreme Court Rule 10 3,4

NMSA 1978, §§ 30-20-1 6

NMSA 1978,60-7B-1D 6

NMSA 1978, 60-7B-1.1F 6

RESPONDENTS' APPENDIX

Affidavit of Mitchell B. Trimmer, filed in the United States District Court for the District of New Mexico on February 14, 1992 ..... 1a

Affidavit of C. Joseph Girard, filed in the United States District Court for the District of New Mexico on October 19, 1992 ..... 5a

STATEMENT OF THE CASE

Petitioners brought this civil rights action for alleged violation of their civil rights in the United States District Court of the District of New Mexico on October 31, 1991. The action arises out of an incident which occurred on June 29, 1991, shortly before midnight, in which Respondents, Los Alamos, New Mexico police officers responded to a report of a party at Petitioners' home. Respondents entered Petitioners home without search warrants during the course of the party which involved underage individuals consuming alcohol and subsequently arrested Petitioners. At the trial on the merits, following the close of Petitioners case-in-chief, the District Court directed a verdict in favor of Respondents based upon its determination that Respondents were entitled to qualified immunity. The Tenth Circuit Court of Appeals affirmed the District Court on grounds that at the time of the incident, the law did not clearly establish whether the offenses involved were sufficient to justify a warrantless entry based upon probable cause and exigent circumstances and that an objectively reasonable officer could have believed that the warrantless entry was lawful.

In addition to the Statement of Facts in Petitioners' Petition for a Writ of Certiorari, the following facts are material to the consideration of the question presented.

1. Upon arrival at the Stege residence, Lieutenant Girard observed a large number of automobiles parked in front of the residence. (Appendix, p. 5a).

2. Lieutenant Girard believed a number of offenses were being committed in the Stege residence includ-

ing the offenses of disorderly conduct, minor in possession of alcohol, tampering with evidence and giving alcohol to a minor. (Appendix, p. 6a).

3. Lieutenant Girard believed evidence was being destroyed once persons inside the Stege residence found out police were outside. *Id.*

4. A number of persons at the party in question were apprehended attempting to flee the party from the back door of the residence by officers assisting Respondents' in response to the report of a loud party in progress. (Appendix, pp. 6a).

5. Open beer cans and bottles were scattered everywhere in the residence. (Appendix, p. 6a).

6. Approximately 10 to 12 underage individuals were found hiding in bedroom and bathroom closets. *Id.*

7. Approximately 25 individuals were present in the residence at the time of the officers' entry. (Appendix 7a).

8. Corporal Trimmer had seen David Danforth, an underage individual, drinking alcohol prior to Trimmer's entry into the house. David Danforth was found by Officer Trimmer in an upstairs closet hiding behind a pile of clothes. (Appendix, pp. 1a, 2a).

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari fails to demonstrate that this case is appropriate for review by this Court. The authorities relied upon by Petitioners do not establish that the decision of the Tenth Circuit Court of Appeals was in error or in conflict with federal or state law. None of the general considerations governing review on writ of certiorari outlined

in Supreme Court Rule 10 or other special reasons exist to justify review by this Court.

In this case involving whether Respondents were entitled to qualified immunity, the law in existence at the time of the incident created a gray area as to whether the offenses involved were sufficiently serious to justify a warrantless entry and search. Petitioners have not met their burden of establishing that the law clearly established Respondents were not entitled to qualified immunity based on the circumstances surrounding the warrantless search. Because the law was not clearly established that the conduct of Respondents was in violation of the law, the Tenth Circuit correctly concluded that Respondents were entitled to qualified immunity.

In light of the circumstances at the time of the incident, it was reasonable for Respondents to conclude that the warrantless entry and search was supported by probable cause and exigent circumstances and that their conduct was lawful. Serious crimes involving the provision to and consumption of alcohol by minors were committed in plain view of Respondents and under the circumstances of the case, the destruction of evidence was likely. Petitioners have failed to demonstrate that it was unreasonable, in light of clearly established law and the circumstances of the case, for Respondents to conclude that their actions were consistent with Petitioners Fourth Amendment rights.

ARGUMENT

A. Petitioners Have Failed To Establish Sufficient Grounds For Review Of This Case On Writ Of Certiorari

A petitioner for writ of certiorari must demonstrate that there are "special and important reasons" why this Court should review the case. Sup. Ct. R. 10.1. The Tenth Circuit Court of Appeals determined that Respondents were entitled to qualified immunity because the law at the time of the incident did not clearly establish that the warrantless entry and the subsequent arrests by Respondents was in violation of the law. As is demonstrated more fully below, the authorities relied upon by Petitioners do not support a conclusion that the Court of Appeals decision is in error. The Petition for Writ of Certiorari should be denied because Petitioners have failed to show that this case involves any of the general considerations governing review on writ of certiorari outlined in Supreme Court Rule 10 or that other special reasons exist to justify review by this Court.

B. Petitioners Failed To Establish That The Conduct Of Respondents Violated Law Clearly Established At The Time Of The Incident

An assertion of qualified immunity is properly evaluated under the standard enunciated by this Court in *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed. 2d 396, 102 S.Ct. 2727 (1982). In *Harlow*, this Court held that government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have know. *Id.* at 818, 73 L.Ed. 2d 396, 102 S.Ct. at 2738. Operation

of the objective standard established in *Harlow* depends upon whether the contours of the constitutional or statutory right are sufficiently clear that a reasonable officer would understand that what he is doing violates that right; "in light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 639, 97 L.Ed. 2d 523, 107 S.Ct. 3034, 3039 (1987). The Tenth Circuit Court of Appeals correctly concluded that the law at the time of the incident in question did not clearly establish that the offenses were not sufficiently serious to justify a warrantless entry and that an objectively reasonable officer could have believed that the warrantless entry was lawful.

Once a defendant asserts qualified immunity, it becomes the plaintiff's burden to show that the law was clearly established. *Patrick v. Miller*, 953 F.2d 1240, 1243 (10th Cir. 1992). Petitioners failed to meet this burden by doing precisely what this Court has indicated is insufficient. Petitioners have failed to do more than identify in the abstract a clearly established right to be free from a warrantless search of one's home which Respondents have violated. See *Anderson*, 483 U.S. at 640, 97 L.Ed. 2d 523, 107 S.Ct. at 3039. Petitioners have not shown that at the time of the incident, it was clearly established that the circumstances with which Respondents were confronted did not constitute probable cause and exigent circumstances.

Petitioners seem to rely on this Court's decision in *Payton v. New York*, 445 U.S. 573, 63 L.Ed. 2d 639, 100 S.Ct. 1371 (1980) in support of their position that the law was clearly established at the time of the incident. *Payton* holds "that the Fourth Amendment

* * * prohibits the police from making a warrantless and non-consensual entry into a suspects home in order to make a routine felony arrest." *Id.* at 576, 63 L.Ed. 2d 639, 100 S.Ct. at 1374-75. This Court in *Payton* expressly acknowledged that it did not consider the type of exigent circumstances that would justify a warrantless entry into a home. *Id.* at 583, 63 L.Ed. 2d 639, 100 S.Ct. at 1378. Therefore, *Payton* did not make clear that the conduct of the Respondents was a violation of law.

Petitioners rely further on *Welsh v. Wisconsin*, 466 U.S. 740, 754, 80 L.Ed. 2d 732, 104 S.Ct. 2091 (1984). As the Tenth Circuit Court of Appeals correctly observed, the Supreme Court held in *Welsh v. Wisconsin* that a noncriminal civil forfeiture offense for which no imprisonment was possible was not a sufficiently serious offense to justify a warrantless entry even if probable cause and exigent circumstances existed. The Tenth Circuit had also held that a misdemeanor punishable by less than one year's imprisonment could be a sufficiently serious offense to justify a warrantless home entry in *Bledsoe v. Garcia*, 742 F.2d 1237, 1241 (10th Cir. 1984). The offenses implicated in this case, which included destruction of evidence, disorderly conduct, the possession by and the provision of liquor and alcoholic beverages to minors (*see* NMSA 1978, §§ 30-20-1, 60-7B-1D, 60-7B-1.1F), fell within the gray area between the situation held to constitute an unlawful entry and seizure in *Welsh* and the situation in *Bledsoe* which was held to constitute a lawful warrantless entry. It was, therefore, not legally apparent at the time of the incident in light of clearly established law that a warrantless entry under the circumstances of this case was a violation of law.

Petitioners mistakenly argue that *United States v. Aquino*, 836 F.2d 1268 (10th Cir. 1988), provides a clear statement of when warrantless entries and searches are lawful in the Tenth Circuit. In *Aquino*, the Tenth Circuit Court of Appeals noted that the contours of a sufficient emergency to justify a warrantless search for evidence remain unclear. *Id.* at 1271 *citing Cooledge v. New Hampshire*, 403 U.S. 443, 455, 29 L.Ed. 2d 564, 91 S.Ct. 2022, 2032 (1971). *Aquino* established the test in the Tenth Circuit for warrantless searches where police fear the destruction of evidence. The court held that an exception to the warrant requirement under such circumstances should be:

> (1) pursuant to clear evidence of probable cause, (2) available only for serious crimes and in circumstances where the destruction of the evidence is likely, (3) limited in scope to the minimum intrusion necessary to prevent the destruction of evidence, and (4) supported by clearly defined indicators of exigency that are not subject to police manipulation or abuse.

Id. at 1272. *Aquino* was decided in the context of a drug investigation and claimed exigent circumstances. *Aquino* did not address other types of "serious crimes" which would or would not justify a warrantless entry and search. Thus, *Aquino* provides no further guidance to police officers nor does the decision make it apparent that the crimes of destruction of evidence, disorderly conduct, possession by and the provision of liquor and alcoholic beverages to a minor are not sufficiently serious to justify a warrantless entry and search.

C. It Was Reasonable For Respondents To Believe That The Warrantless Entry and Search In This Case Was Lawful

As noted above, the relevant question where there is a claim of qualified immunity is whether a reasonable officer could have believed the warrantless entry and search to be lawful. *Anderson, supra,* 482 U.S. at 641, 97 L.Ed. 2d 523, 107 S.Ct. at 3040. Whether probable cause and exigent circumstances actually existed at the time is not the issue. As this Court noted in *Anderson,* the Supreme Court has "frequently observed" and "many cases on point amply demonstrate, the difficulty of determining whether particular searches or seizures comport with the Fourth Amendment." *Anderson,* 483 U.S. at 644, 97 L.Ed. 2d 523, 107 S.Ct. 3041. This Court has also recognized that it is inevitable that law enforcement officials will in some cases *reasonably but mistakenly conclude* that probable cause or exigent circumstances are present and that in such cases those officials should not be held personally liable. *Id.* at 641, 97 L.Ed. 2d 523, 107 S.Ct. at 3039-40. Whether a police officer acted reasonably depends upon the information possessed by the searching officers at the time of the incident. *Id.*

Applying the facts to the law, it was objectively legally reasonable for the Respondents to conclude that the warrantless entry and search was supported by probable cause and exigent circumstances and, as demonstrated above, it was not clearly established that the offenses involved were not sufficiently serious to justify a warrantless entry and search. Probable cause exists when known facts and circumstances are sufficient to warrant a prudent, cautious and

trained police officer to believe that a serious crime has been, or is being, committed. *United States v. Chavez*, 812 F.2d 1295 (10th Cir. 1987), *citing United States v. McEachin*, 670 F.2d 1139, 1142 (D.C. Cir. 1981); *United States v. Lopez*, 777 F.2d 543 (10th Cir. 1985); *United States v. Herring*, 582 F.2d 535 (10th Cir. 1978). It is undisputed that Respondents arrived at the Stege residence in response to a call that a loud party was in progress and that they heard yelling when they arrived on the scene. From the front door of the residence Respondents could see, in plain view, through a window, that minors were consuming alcohol. Inspecting objects which come into plain view lawfully is not a search. *United States v. Jimenez*, 864 F.2d 686 (10th Cir. 1988). Respondents knocked on the door, heard someone shout "cops" and heard footsteps running toward the back of the house and upstairs.

Respondents could see, in plain view, evidence that serious offenses involving the provision to and consumption of alcohol by minors were being committed. The destruction of evidence was likely because suspects and potential witnesses were fleeing. The intrusion was limited to that necessary to locate the minors and witnesses hiding, concealing, and/or destroying evidence in the house. It was reasonable for Respondents to believe that exigent circumstances existed because a prudent, cautious and trained officer would believe that prompt action was necessary to prevent escape of suspects and witnesses and destruction of evidence.

In *Aquino* case, probable cause to search Aquino's home existed despite the fact that the police were not certain that the cocaine in question came from

Aquino. The police followed one suspect to the home of another who then traveled to and from Aquino's home. Consequently,

> the facts and circumstances within their . . . knowledge and of which they had reasonably trustworthy information [were] sufficient in themselves to warrant a man of reasonable caution in the belief that [the cocaine was located in Aquino's home].

United States v. Aquino, 836 F.2d at 1272-73, citing *Dunaway v. New York*, 442 U.S. 200, 208, n. 9; 99 S.Ct. 2248, 2254, n. 9 (1979). In *Aquino*, the police had probable cause despite their lack of certainty. In this case, Respondents were certain, based upon their non-intrusive observations and actual knowledge of the ages of the minor consuming alcohol, that a serious crime was being committed.

In *United States v. Chavez*, 812 F.2d 1295 (10th Cir. 1987), both probable cause and exigent circumstances existed so as to justify a warrantless search, seizure and arrest. The police were justified in believing that "buy money" and illegal drugs were located at the premises they searched based upon their surveillance. Even more so in the case at bar, Respondents actually saw the crime being committed. Exigent circumstances existed in *Chavez* because the police reasonably believed that the drugs and money would be concealed or destroyed. Likewise, in this case, Respondents, who heard someone shout "cop" and then heard running feet, could reasonably conclude that suspects were fleeing and/or destroying evidence.

In *United States v. Lopez*, 777 F.2d 543 (10th Cir. 1985), the officers, smelling a substance associated with transporting cocaine and observing the curious way in which the speakers were mounted in an automobile, had sufficient probable cause to search without a warrant. In the case at bar, the officers actually observed the crime being committed. In *United States v. Herring*, 582 F.2d 535 (10th Cir. 1978), the officer, smelling marijuana, observing the vehicle in which it was carried speeding and observing the flight of the suspects, had sufficient probable cause to justify stopping the vehicle and arresting the occupants.

This Court has held that law enforcement officers whose judgments in making the difficult determination of whether a particular search and seizure comports with the Fourth Amendment are objectively reasonable should be granted qualified immunity from personal liability. *See Anderson*, 483 U.S. at 644, 97 L.Ed. 2d 523, 107 S.Ct. at 3041. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 344-345, 89 L.Ed.2d 271, 106 S.Ct. 1092, 1098 (1986). Respondents have failed to show that Respondents knowingly violated the law in this case or that Respondents' determination that the warrantless entry and search was lawful was unreasonable. This case is, therefore, unsuitable for review by this Court on a writ of certiorari and Petitioners Petition for Writ of Certiorari should be denied.

CONCLUSION

The Tenth Circuit correctly found that the law at the time of the incident did not clearly establish that the offenses being committed by Petitioners in the

presence of Respondents were insufficiently serious to justify the warrantless entry and search based upon probable cause and exigent circumstances. The Petitioners bore the burden below of establishing that Respondents' alleged conduct violated law clearly proscribing their actions. Petitioners failed to establish that Respondents' alleged conduct violated law clearly established at the time of the incident. At the time of the incident, probable cause and clear indicators of exigent circumstances existed and an objectively reasonable officer could have believed that the warrantless entry and search was lawful. Respondents are, therefore, entitled to qualified immunity and Petitioners' Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CIVIL NO. 91-1087SC

JASON STEGE and JUSTIN STEGE,
Plaintiffs,

vs.

C. JOSEPH GIRARD and MITCHELL B. TRIMMER,
Defendants.

AFFIDAVIT OF MITCHELL B. TRIMMER

I, Mitchell B. Trimmer, having been first duly sworn and upon oath state as follows:

1. On June 29, 1991, I served as and am presently a member of the Police Department of the City of Los Alamos, State of New Mexico. This affidavit is directed to occurrences of that date.

2. At approximately 11:43 p.m., a female citizen called the Los Alamos Police Department to report a loud party at the 3200 block of Walnut Street. Lieutenant Girard, Detective Mazuranich, Officer Corcoran and I responded to the area. I was the first officer to arrive at the area and I heard several people yelling profanities or obscenities loudly inside 3272-A Walnut. The other officers arrived and we approached the residence. Officer Corcoran and Detective Mazuranich went to the rear of the house and Lieutenant Girard and I went to the front door.

3. I looked in the window of the front door and observed an individual later identified as David Danforth who I knew to be under the age of 21 years old. He was holding a can of Miller Genuine Draft beer in his hand and I ob-

served him open the can. I also observed Eric Hall sitting on the couch in the living room playing cards. There were several open beer containers in front of Eric Hall on the table he was playing on. I knew Eric Hall was under the age of 21.

4. When I knocked on the door of the house someone looked through the window in the door and yelled "cops." Everyone in the house began running either upstairs or out the back door. Another individual later identified as Jason Stege looked through the window in the door. I identified myself as a police officer and ordered him to open the door.

5. After a short period of time, Jason Stege opened the door part way and blocked the entrance with his body. I informed Mr. Stege that I had observed minors in possession of alcohol in the residence and told him to move away from the door so that we could come in. He told us we could not enter the house so Lieutenant Girard and I both told him that we were coming in and told him to move. Lieutenant Girard and I had to push the door open as Mr. Stege continued to try and force the door closed. As I entered the house I placed Jason Stege under arrest for resisting an officer.

6. I was informed by Jason Stege that this was his house. I identified another individual in the living room as Justin Stege. He told me he also lived in this house and that the house belonged to their mother who was out for the evening. I then placed Justin Stege under arrest for buying, selling or giving alcohol to minors.

7. After rounding up all the people at the party I was unable to find David Danforth. I went upstairs to look for him and found him in a closet in one of the bedrooms, concealed behind a large pile of clothes.

8. Due to the overwhelming evidence, a hundred or so containers of beer, Lieutenant Girard and I decided to

arrest all present for the offense of minor in possession of alcohol.

9. Due to extenuating circumstances involving numerous priority calls, all individuals were released from the residence after giving their names, date of birth, and address and phone numbers to an officer. All were released with the understanding that they would be summoned to court or contacted later for referral or criminal citation.

10. Lieutenant Girard and I picked up approximately 70 opened cans and bottles of beer, most of which had some quantity of alcohol in them. These were stored in two coolers that were in the living of the residence. The evidence was transported to the police department.

11. Jason and Justin Stege were transported to the Los Alamos Police Department jail and booked.

12. In entering the Stege residence without a warrant I was carrying out my duties as a law enforcement officer utilizing my own discretion in carrying out my duties. I believe I was acting within the law in entering the residence without a warrant based on the facts and circumstances stated above.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Mitchell B. Trimmer
MITCHELL B. TRIMMER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing Affidavit of Mitchell B. Trimmer was acknowledged before me this 13 day of February, 1992, by Mitchell B. Trimmer.

/s/ John S. Silver
NOTARY PUBLIC

My commission expires:

12/26/93

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CIVIL NO. 91-1087SC

JASON STEGE and JUSTIN STEGE,
Plaintiffs,

vs.

C. JOSEPH GIRARD and MITCHELL B. TRIMMER,
Defendants.

AFFIDAVIT OF C. JOSEPH GIRARD

I, C. Joseph Girard, having been first duly sworn and upon oath state as follows:

1. On June 29, 1991, I served as a police officer of the City of Los Alamos, State of New Mexico. This affidavit is directed to occurrences of that date.

2. At approximately 11:43 p.m., I responded to the 3200 block of Walnut Street in Los Alamos, New Mexico on a report of a loud party in progress. Corporal Trimmer advised me by radio that he had located a party at 3272-A Walnut. Approaching the residence on foot, I could hear loud talking obviously coming from young voices and music coming from the open windows. After arrival I observed a large number of automobiles parked in front of the residence in question. After verifying the disorderly conduct, my intention was to request the inhabitants of the Stege residence to cease and desist the breach of the peace. Corporal Trimmer went to the front door and a moment later advised that he could see an individual, who he recognized to be a minor, with a can of beer in his hand.

3. I felt at this point it was appropriate to have Corporal Trimmer knock on the door and attempt to enter

the residence as I felt a number of serious crimes were being committed including the offenses of disorderly conduct, minor in possession of alcohol, tampering with evidence, and giving alcohol to a minor.

4. After Corporal Trimmer knocked on the door there was a shout of "cops" from inside and many footsteps could be heard running toward the back of the house and other footsteps going up the stairway. In my opinion at this time, it was important that we enter this residence immediately as it was apparent that evidence was being destroyed and that there was a possibility that the people attending the party would attempt to leave the residence to avoid the police officers who were present. If this were to happen, that would mean the potential for a number of minors who had been drinking intoxicating liquors to be driving on the streets of Los Alamos. Based on prior experience and training, when I heard running in the residence, I believed that the persons fleeing may be arming themselves with weapons and feared for the safety of my officers if I did not take immediate action.

5. Corporal Trimmer knocked two or three more times and the door was finally opened by Jason Stege. Mr. Stege was informed that a minor had been observed drinking and that the police officers were coming in. Mr. Stege refused to step aside and it was necessary to forcibly move him back from the door. He was placed under arrest by Corporal Trimmer. Two other police officers, Corcoran and Mazuranich, had gone around the back door at the sound of running feet and they had controlled a number of kids in the back yard. Almost everyone visible in the residence appeared to be a minor or juvenile. There were open beer cans and bottles scattered everywhere in the residence. I went upstairs and found approximately 10 to 12 more kids hiding in the bathroom and bedroom closets.

6. After entering the residence and considering the circumstances I considered that contributing to the delin-

quency of minors might be an appropriate charge against the Stege brothers.

7. After organizing the people at the party, it appeared that we were dealing with approximately 25 individuals. The two Stege brothers were taken into custody and transported to the station.

8. Corporal Trimmer and I picked up most of the beer containers in the residence. Most had some quantity of beer in them and they were dumped in the sink. I could see beer containers in the back porch and a trash can on the back porch was half full of beer containers.

9. In instructing my officers to enter the Stege residence I was carrying on my duties as a law enforcement officer using my own discretion in carrying out my duties. I believe I was acting within the law and could enter the residence without a warrant based on the circumstances which I described herein. I believe that I had probable cause to believe a serious crime was being committed at the Stege residence and that the circumstances which I described above would legally allow me to enter the residence without a warrant.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ C. Joseph Girard
C. JOSEPH GIRARD

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing Affidavit of C. Joseph Girard was acknowledged before me this 9 day of October, 1992, by C. Joseph Girard.

/s/ ???????????
NOTARY PUBLIC

My commission expires:
12/26/96